

TAB

CRC, 2/13/2003

OLC 77-1650/a
4 May 1977

STATINTL

MEMORANDUM FOR:

FROM STATINTL :

SUBJECT : Draft Paper: "The Roles of the DCI..."
(PRM-11, Task 2)

REFERENCE : Your Memo dated 27 April 1977, same subject

Please see the attached Action Plan on congressional oversight in connection with III., I. of PRM-11, Task 2. We do feel that the Spokesman to Congress role (in its oversight as opposed to its substantive intelligence mode) would be affected by organizational changes, especially those effected through statute. The oversight committees responsible for such a statute, assuming it amounts to an aggrandizement of the DCI's authority and responsibilities, most likely will reclaim turf which has been lost during the proliferation era. Simply put, congressional oversight and the power that goes with it reflect the way things are organized in the Executive Branch. If significant organizational changes occur, particularly through statute, the DCI and oversight committee relationship most likely will be adjusted.

STATINTL

Attachment

ACTION PLAN - CONGRESSIONAL OVERSIGHT

A. Objectives

- Simplify oversight arrangements.
 - Concentrate general oversight in absolute minimum number of committees (legislation, budget, organization, functions, activities, abuses)
- Improve security and reduce proliferation of sensitive matters
 - House Rule XI (access to records and meetings)
 - Hughes/Ryan (covert action)
 - Tighten rules and procedures against disclosure
 - Limitation on staff access
- Assure retention of congressional capability for exposure of wrongdoing
- Provide Congress with the product of foreign intelligence

B. Important Factors

- The prevailing congressional sentiment at this time favors a separate House Intelligence Committee corresponding to the Senate Select Committee on Intelligence rather than a Joint Committee
- However, a Joint Committee could be raised as the quid pro quo for legislation and legislation would be the most suitable vehicle for accomplishing Executive Branch objectives (See A above)

C. Interim Proposal

- Simplify oversight arrangements in the House by establishing a House Select Committee corresponding to the Senate Select Committee on Intelligence.
- Recognize the budgetary, efficiency, and economy roles of the Appropriations Committees
- Modify House Rule XI, limit staff access to sensitive matters, and tighten rules and procedures against disclosures
- Formalize arrangements for Budget Committees to receive at the maximum only information relating to major functional categories, without sensitive details
- Reduce the number of members who receive reporting under the Hughes/Ryan amendment
 - By rider to legislation, limit reporting only to Senate and House Select Committees (designees on these committees would represent the foreign relations Committees) and to the Senate and House Appropriations Subcommittees (the turf of these committees must be preserved because of their role in reserve releases and expenditure of funds), thus reducing covert action reporting from 7 to 4 committees, or

-- If legislation is not feasible, the House resolution establishing the House Select Committee should include an interpretation of Hughes/Ryan language that

--- "appropriate committees" means the House Select Committee and a subcommittee of the Appropriations Committee, and that the "House International Relations Committee" means a subcommittee of that committee, (thus reducing the total number of Members receiving such reporting by cutting out the full membership of the House International Relations Committee which totals 37 members)

-- A similar resolution should be passed in the Senate as it affects the Appropriations and Armed Services Committees, (thus reducing the committees in the Senate from 4 to 3) and as it affects the Senate Foreign Relations Committee (thus reducing from 16 to 2 the number of Members of that Committee entitled to receive covert action reporting)

D. Congressional Support Plan

-- First, President Carter should assemble congressional leadership to enlist their support (Tab A)

-- Second, the Vice President should follow-up with the Chairman and Ranking Minority Member of the four committees which must give up turf and of the Senate Select Committee on Intelligence (Tab B)

-- Third, under the direction of the Vice President and the DCI, the White House and the DCI's legislative liaison staffs should discuss prospects for change with:

--- Members in the House who have sponsored major intelligence reorganization legislation (Tab C)

---With key Members concerned with misconduct
or abuse (Tab D)

--- And with other key Members (Tab E)

E. Talking Points on Congressional Cooperation to Protect
Vital Intelligence Secrets attached.

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TAB A

PRESIDENTIAL CONTACT
(CONGRESSIONAL LEADERSHIP)

SENATE

James O. Eastland (D., Miss.), President pro tempore
Hubert H. Humphrey (D., Minn.), Deputy President pro tempore
Robert C. Byrd (D., W. Va.), Majority Leader
Alan Cranston (D., Calif), Majority Whip
Daniel K. Inouye (D., Hawaii), Secretary, Democratic Conference
Howard H. Baker (R., Tenn.), Minority Leader
Ted Stevens (R., Alaska), Minority Whip
John G. Tower (R., Texas), Chairman, Policy Committee

HOUSE

Thomas P. O'Neill (D., Mass.), Speaker of the House
James Wright (D., Texas), Majority Leader
John Brademas (D., Ind.), Majority Whip
Tom Foley (D., Wash), Chairman, Democratic Caucus
John J. Rhodes (R., Ariz.), Minority Leader
Robert H. Michel (R., Ill.), Minority Whip
John B. Anderson (R., Ill.), Chairman, Party Conference

TAB B

VICE PRESIDENTIAL CONTACT

(SENATE SELECT COMMITTEE ON INTELLIGENCE)

Daniel K. Inouye (D., Hawaii)

Barry M. Goldwater (R., Ariz.)

(CHAIRMEN AND RANKING MINORITY
MEMBERS OF THE FOUR COMMITTEES
WHO MUST GIVE UP TURF)

John C. Stennis (D., Miss.), Senate Armed Services Committee

Barry M. Goldwater (R., Ariz.), Senate Armed Services Committee

John Sparkman (D., Ala.), Senate Foreign Relations Committee

Clifford P. Case (R., N.J.), Senate Foreign Relations Committee

(Note: Senators Stennis, Goldwater, and Case will remain
in the intelligence loop as a result of their membership on
the Intelligence Operations Subcommittee of the Senate
Appropriations Committee or the Senate Select Committee
on Intelligence.)

Melvin Price (D., Ill.), House Armed Services Committee

Bob Wilson (R., Calif.), House Armed Services Committee

Clement J. Zablocki (D., Wis.), House International Relations
Committee

William Broomfield (R., Mich.), House International Relations
Committee

TAB C

CONGRESSIONAL LIAISON CONTACT

(MEMBERS IN HOUSE WHO HAVE SPONSORED
MAJOR INTELLIGENCE REORGANIZATION LEGISLATION)

Les Aspin (D., Wis.)

John Conyers (D., Mich.)

Ron Dellums (D., Calif.) (also on House
Armed Services Committee)

Robert Drinan (D., Mass.)

Gus Hawkins (D., Calif.)

~~Fortney Stark (D., Calif.) (also on House
International Relations Committee)~~

Berkley Bedell (D., Iowa) (also on House
International Relations Committee)

George Brown (D., Calif.)

Bob Carr (D., Mich.)

Shirley Chisholm (D., N. Y.)

Parren Mitchell (D., Md.)

Charles Rangel (D., N. Y.)

Edward Roybal (D., Calif.)

TAB D

CONGRESSIONAL LIAISON CONTACT

(MEMBERS CONCERNED WITH MISCONDUCT OR ABUSE)

SENATE

Edward M. Kennedy (D., Mass.)
George McGovern (D., S. Dak.) (also member
of Senate Foreign Relations Committee)
Frank Church (D., Idaho) (also member of
Senate Foreign Relations Committee)

HOUSE

Donald Fraser (D., Minn.) (also member of
House International Relations Committee)
Robert Kastenmeier (D., Wis.)
Jonathan Bingham (D., N.Y.) (also member of
House International Relations Committee)
Leo Ryan (D., Calif.) (also member of House
International Relations Committee)
Robert Giaimo (D., Conn.) (also member of
House Defense Appropriations Subcommittee)
Michael Harrington (D., Mass.) (also member
of House International Relations Committee)
Toby Moffett (D., Conn.)
Stephen Solarz (D., N.Y.) (also member of
House International Relations Committee)
Otis Pike (D., N.Y.) (also member of House
Armed Services Committee)

TAB E

CONGRESSIONAL LIAISON CONTACT

(OTHER KEY MEMBERS)

HOUSE

Jack Brooks (D., Texas)
Peter Rodino (D., N.J.)
Dale Milford (D., Texas)
Richard Bolling (D., Mo.)
Abner Mikva (D., Ill.)
Dante Fascell (D., Fla.)
Edward Derwinski (R., Ill.)
Frank Horton (R., N.Y.)
John Erlenborn (R., Ill.)
Robert McClory (R., Ill.)

SENATE

Abraham Ribicoff (D., Conn.)
Charles Percy (R., Ill.)

CONGRESSIONAL COOPERATION TO PROTECT
VITAL INTELLIGENCE SECRETS

1. The United States must have a fully effective intelligence program in keeping with our national security interests.
2. At the same time, the correctness and legality of that program must be assured as well as correct dissemination and control of intelligence in the Executive, and appropriate accountability to the Congress.
3. Congress has a number of legitimate interests in foreign intelligence -- the efficiency and effectiveness of its management, the extent of its clandestine activities, its legislative charter, and the substantive intelligence information it produces. These congressional interests must be satisfied but in a manner which protects those secrets which are vital to our Nation.
4. In the 1947 National Security Act and the 1949 Central Intelligence Agency Act, Congress proclaimed that certain foreign intelligence sources and methods must be protected. Otherwise, sources will dry up and we will be denied information. (People would be jeopardized. Some of the technical collection systems which could be countermeasured would be either irreplaceable or replaceable at the cost of hundreds of millions of dollars.)

5. Intelligence secrets are fundamentally different from many other secrets. The damage of disclosure is not limited to revelation of a particular piece of information, but extends to the continuing capability to collect such information. (Awareness of our military capabilities might deter others, but revelation of our collection capabilities would seldom, if ever, serve our interest.)
6. I am concerned about the proliferation of such secrets. For example, for CIA alone, five committees are involved in the oversight process, three in the Senate, two in the House, and an additional committee in each House gets involved through covert action reporting requirements. They are: Senate Select Committee on Intelligence, Armed Services Committee, Appropriations Committee, and Foreign Relations Committee, and in the House, the Armed Services, Appropriations, and International Relations Committees. This normally involves about 64 Members plus staff.
7. I am also concerned over the difference in treating the same subjects. For example:

Under the current Foreign Assistance Act, the President must find that covert actions undertaken by the Agency to implement foreign policy are important to the national security. These are to be reported to the seven committees listed above. On the Senate side, the information

Intelligence, relatively small Subcommittees of the Armed Services and Appropriations Committees, and, in the case of the Senate Foreign Relations Committee, Senators Sparkman and Case, the Chairman and Ranking Minority Member of the Foreign Relations Committee who are the only ones who receive the full details in the first instance. In the case of the House, much larger subcommittees of the Armed Services and Appropriations Committees receive the briefing, with the International Relations Committee undecided but leaning towards a full committee (37 Members) briefing. However, under House Rule XI, all members of the House have access to all Committee records and may attend all briefings.

8. The Congress must itself decide how best to organize and what procedures to adopt so as to carry out Legislative Branch responsibilities in the field of intelligence.
9. There are three areas of concern in considering possible improvements in Executive-Legislative procedures:
 - Number of Oversight Committees: Seven committees is too many. One Joint Committee or a House Select Committee paralleling the Senate Select Committee would be preferable, with either the Joint or the two intelligence committees having

more exclusive jurisdiction over sensitive sources and methods than now exists.

- Protection of Sources and Methods: This is an extremely sensitive area and procedures must be worked out which on the one hand would permit, for example, the protection of agent names and identifying information on intelligence services of friendly or neutral countries which collaborate with us, but at the same time, would assure that committees with oversight responsibility have the details necessary for a proper understanding of intelligence activities.
- Third, Rules on Security and Access to information will require attention if both Executive and Legislative are to be satisfied that handling and control of sensitive intelligence documents and information is adequate.

10. The oversight structure should be a further projection of our country's will and ability to protect sensitive operational details.

- The past period of investigations and disclosures have eroded our credibility to protect sources. This is a very serious

problem where the anonymity of association is a condition precedent to cooperation.

- The fact that foreign intelligence activities are not within the scope of parliamentary inquiry in many other countries also shapes the perspective of those foreigners who cooperate with us with the understanding that their identity will be protected.

II. First choice would be a single Joint Committee. Features of such a committee would enhance the projection of our credibility for protecting sensitive operational sources:

- Exclusive jurisdiction for legislation and related oversight.
- Exclusive authority to investigate intelligence activities.
- Exclusive recipient in the Congress of sensitive operational details, including covert action reporting.
- Sensitive information provided to the Committee would not be available to non-Members.
- Strict rules for the secure handling of information within the Committee, and security clearances and security agreements with Committee staff personnel paralleling what has been established by the Senate Select Committee on Intelligence.

- Express representation on the committee(s) of
Members from International Relations, Appropriations,
and Armed Services.
 - Provisions for periodic rotation of membership.
 - A. Committee membership should serve as the surrogates
for the legitimate interests of other committees and for
a fairly broad political perspective within the Congress.
 - B. The Appropriations Committees of both Houses would
still be required to appropriate money from the Treasury
to support intelligence activities. To the extent that this
is necessary, rules such as House Rule XI should be
modified to limit access to the sensitive information
provided to justify the budget solely to the Members
and staff of the Appropriations Subcommittees involved.
 - C. Abuses - The Committee should be:
 - Required to investigate any complaint
it receives from any Member or committee,
and to
 - Make the record of its findings available
to the appropriate leadership of the Congress.
- This procedure would help assure the complaining Member
or committee that appropriate action has been taken
without requiring in the process either disclosure or
confirmation of sensitive operational details outside

- of the committee or the leadership.
- D. Legislation - When legislation which may inadvertently impair sensitive lawful intelligence activities is considered by another committee, the Joint Committee should be used as the conduit for understanding the problem and seeking an appropriate remedy with the other committee by using the investigative and fact-finding resources of the Joint Committee to assure that the problem is real and the remedy sound but avoiding revelation of sensitive details. Again, the record could be made available to appropriate leadership outside the committee, but the sensitive details would be preserved from unnecessary disclosure or confirmation.
12. House Select Committee - If a Joint Committee with all its advantages is not achievable in the near future, a House committee paralleling the Senate Select Committee on Intelligence should be established which would concentrate exclusive oversight in that committee and stop proliferation of sensitive information beyond that committee and the Appropriation Subcommittee which considers budget requests. As part of that concentrated oversight in the covert action field, the Hughes-Ryan Amendment would have to be repealed or amended. Designees from the House International Relations Committee could be watchful for foreign relations interests and, if they are not designees, perhaps the Chairman and Ranking Minority of that Committee could also sit in on covert action briefings.

13. Finally, we must come to some sort of basic agreement on how foreign intelligence secrets are to be treated:

- (1) First, I propose that there be a presumption against requesting any names of sources, the specific details of technical collection devices and systems maintained in compartmented channels, names of employees in sensitive positions, names of persons who may be targets of kidnappings or assassinations by foreign intelligence organizations, names of organizations cooperating with the Agency and detailed information which could pinpoint any of the above.
- (2) Second, if in unique cases such information is necessary, procedures should be instituted to protect identities and details by use of identity numbers.
- (3) Third, there should be majority agreement within the committees that such information should be requested.
- (4) Fourth, there should be absolutely no access to this sensitive material by non-members of the committee or personal staff of committee Members.

- (5) Fifth, access to sensitive briefings and materials should be governed by uniform rules and the number of congressional staffers exposed to such information should be reduced to the absolute minimum necessary.
- (6) Sixth, the need-to-know principle is as important to apply to the Congress as it is within the Executive. We need congressional support for the concept that only committee staffers with a defined need to know may sit in on committee briefings where sensitive material is covered or have access to material after the fact.
- (7) Seventh, there should be a security investigation of committee staff members and they should execute a secrecy agreement with attention to its enforcement including the possibility of injunction, appropriate criminal sanctions and termination of employment.
- (8) Eighth, the highest standards of physical security and control of classified information should be established.

- (9) Ninth, all hearings involving classified information should be in executive session with appropriate arrangements for assuring that only authorized personnel are in attendance and that an appropriate technical sweep and monitoring throughout is conducted against any eavesdropping devices.
- (10) Tenth, transcripts should only be taken by reporters with appropriate security clearance and the steno-tapes and transcripts should never leave the physical control of an authorized employee of either the Intelligence Community or the congressional committee.
- (11) Eleventh, there should be consultation with the Intelligence Community on the sanitization of information to be published.
- (12) Twelfth, there should be a mutual agreement on the secure disposition or storage of sensitive information after it has served its purpose.

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